

# DRAFT

NO. \_\_\_\_\_

RICARDO AVITIA, § IN THE DISTRICT COURT  
Plaintiff, §  
VS. § TARRANT COUNTY, TEXAS  
TEXAS CHRISTIAN UNIVERSITY, §  
Defendant. § \_\_\_\_\_ JUDICIAL DISTRICT

## **PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Ricardo Avitia, Plaintiff, complaining of Defendant, Texas Christian University, and files this his Original Petition and Request for Disclosure, and for cause of action, would respectfully show the Court as follows:

**1.**

Pursuant to Rule 190 of the Texas Rules of Civil Procedure, Plaintiff alleges that discovery is to be conducted under Level II.

**2.**

Plaintiff is an individual residing in Texas.

Defendant Texas Christian University (hereinafter referred to as "Defendant TCU") is a private university, and doing businesses in Texas, and may be served with process by serving its registered agent, Victor J. Boschini, Jr., 2800 South University Drive, Fort Worth, Texas 76129.

Suit is brought against this entity pursuant to Rule 28 of the Texas Rules of Civil Procedure.

**3.**

Venue is proper in Tarrant County pursuant to § 15.002 of the Texas Civil Practice and Remedies Code because Defendant TCU has a principal office in Tarrant County and because all or a substantial part of Plaintiff's cause of action arose in Tarrant County.

**4.**

Defendant, a great institution of higher learning, has failed to live up to its purported interest in diversity when it terminated a long time loyal Hispanic employee who previously served in the United States in the armed forces.

Plaintiff is Hispanic. Plaintiff was a loyal and competent employee of Defendant TCU for over six (6) years.

Plaintiff is a veteran who served in the United States Marine Corp. As an employee of Defendant, Plaintiff helped veterans apply for financial aid benefits available to veterans of the armed forces. While the number of veterans applying to TCU increased because of an increase in government benefits for veterans who want to attend college, TCU did not increase the staff necessary to keep up with the increased workload associated with this increase in veterans benefits, thus, neglecting veterans who applied to TCU. Plaintiff requested "exempt" status so he could work more than forty (40) hours a week to process the increasing number of financial aid applications made by veterans.

During Plaintiff's employment with Defendant TCU, he was subjected to illegal discrimination as compared to similarly situated coworkers.

In January 2018, Plaintiff complained to Defendant about illegal discrimination he experienced on the job. To wit, Plaintiff complained that Defendant had granted exempt status to a white female co-worker while denying him exempt status.

Soon after Plaintiff's complaint, Defendant issued unwarranted discipline to Plaintiff in the form of a Performance Improvement Plan for failing to keep up with an increased workload for which TCU did not provide a greatly increased workforce to execute it.

On or about April 26, 2018, Defendant TCU terminated Plaintiff for failing to keep up with an increased workload for which TCU did not provide a greatly increased workforce to execute it. The reason for termination is a pretext and the real reason is because of Plaintiff's race (Hispanic) and national origin (Hispanic) and because of his complaints about and opposition to illegal discrimination.

As an employee of Defendant, Plaintiff was provided an employee benefit granting no cost tuition to his children. Two of his children were attending school at TCU when Defendant terminated Plaintiff. In addition, Plaintiff has two other children who planned to attend TCU, including one child who applied to and was admitted by TCU. Plaintiff lost this valuable benefit for his children as a result of his termination by Defendant. Now Plaintiff cannot afford to pay the tuition for TCU and his children have either had to take out student loans or defer attending TCU altogether.

## 5.

Defendant TCU terminated Plaintiff because of his race (Hispanic) in violation of § 21.051 of the Texas Labor Code.

## 6.

Defendant TCU terminated Plaintiff because of his national origin (Hispanic) in violation of § 21.051 of the Texas Labor Code.

## 7.

Defendant TCU terminated Plaintiff because he complained about and opposed illegal discrimination in violation of § 21.055 of the Texas Labor Code.

**8.**

Alternatively, Plaintiff seeks declaratory relief because race (Hispanic) and/or national origin (Hispanic) was a motivating factor and thus, race (Hispanic) and/or national origin (Hispanic) was at least a mixed motive in the termination by Defendant TCU. Plaintiff seeks declaratory relief and attorney fees pursuant to § 21.125 of the Texas Labor Code.

**9.**

As a result of Defendant TCU's actions, Plaintiff has suffered in the past, and in all reasonable likelihood, will suffer in the future, damages including, lost wages, back pay, front pay, lost earning capacity, mental anguish, emotional pain and suffering, lost employment benefits, inconvenience, loss of enjoyment of life, damage to professional reputation, and other damages.

**10.**

Pursuant to Tex. R. Civ. P. 47, Plaintiff seeks monetary relief over \$200,000 but not more than \$1,000,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

**11.**

Plaintiff timely filed a Charge of Discrimination with the Texas Workforce Commission Civil Rights Division complaint number 450-2018-0229 and received his "Right to Sue" letter from the Commission dated April 3, 2019.

**12.**

Plaintiff would further show that he has been required to retain the services of the Law Offices of Jason Smith to prosecute his claims against the Defendant, and asks the Court to award reasonable attorney's fees, expenses, expert witnesses' fees and other court costs pursuant to Chapter 21.259 of the Texas Labor Code.

**13.**

**REQUEST FOR DISCLOSURE**

Under the authority of Texas Rules of Civil Procedure 194, Plaintiff requests that Defendant disclose within fifty (50) days of service of this request, the information or material described in Rules 194.2 and 194.3 and 194.5.

**14.**

**NOTICE OF INTENT TO USE DOCUMENTS**

Pursuant to Tex. R. Civ. P. 193.7, Plaintiff, by and through the undersigned attorney, notifies Defendant of Plaintiff's intention to use, any pretrial proceeding or at trial, any documents produced by Defendant in response to Plaintiff's written discovery.

**15.**

**CIVIL PRACTICES AND REMEDIES CODE § 30.014**

Pursuant to the Civil Practices and Remedies Coe § 30.014, the last three digits of Plaintiff Avitia's driver's license number are #531.

**16.**

**DESIGNATED E-SERVICE MAIL ADDRESS**

The following is the undersigned attorney's designation of electronic service email address for all electronically served documents and notices, filed and unfiled, pursuant to Tex.R.Civ.P. 21(f)(2) & 21(a). ([courtfiling@letsgotocourt.com](mailto:courtfiling@letsgotocourt.com)). This is the undersigned's ONLY electronic service email address, and service through any other email address will be considered invalid.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Defendant be cited to appear and answer herein; and upon final hearing, Plaintiff be awarded judgment for his damages, reinstatement, prejudgment interest, post judgment interest, all interest to be paid at the

highest legal rate; for costs of court and attorney's fees, and for such other and further relief either, at law or in equity, to which the Plaintiff may be justly entitled.

Respectfully submitted,

/s/ JASON C.N. SMITH

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